

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the United States Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 26, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 20, 1999.

William Rice,

Acting Regional Administrator, Region VII.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart R—Kansas

2. Section 52.869 is added to read as follows:

§ 52.869 Identification of plan—Conditional approval.

Elements of the maintenance plan revision to the State Implementation Plan (SIP) submitted by the Governor's designee on May 21, 1998, which address contingency measures for the Kansas City Ozone Maintenance Area are conditionally approved. This includes a commitment to implement the additional reductions as expeditiously as practicable. Full approval of the SIP is conditioned upon receipt of one of the following by June 28, 1999: a request from the Governor of Kansas to require the sale of Federal reformulated gasoline within the Kansas portion of the Kansas City Maintenance Area; adopted regulations implementing the contingency measures identified in the 1992 maintenance plan, i.e., Stage II Vapor Recovery or an Enhanced Inspection and Maintenance Program; or any combination of adopted regulations that will achieve the minimum volatile organic compound reductions (8.4 tons per day) required by the contingency measures identified in the 1992 SIP. In the case of options 2 or 3, upon receipt of regulations implementing these provisions and a request to amend the maintenance plan accordingly, EPA will initiate a rulemaking on this subsequent revision. If the state fails to submit one of the above requirements within the time specified, the conditional approval automatically converts to a disapproval without further regulatory action.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 950427117-9138-08; I.D.051999A]

RIN 0648-AH97

Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawl Activities; Leatherback Conservation Zone

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: NMFS is closing for 2 weeks all inshore waters and offshore waters out to 10 nautical miles (nm) (18.5 km) seaward of the COLREGS demarcation line (as defined at 33 CFR part 80), bounded by 33° N. lat. and 34° N. lat.

within the leatherback conservation zone, to fishing by shrimp trawlers required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, unless the TED has an NMFS' approved escape opening large enough to exclude leatherbacks. This action is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

DATES: This action is effective from May 21, 1999 through 11:59 p.m. (local time) on June 4, 1999.

FOR FURTHER INFORMATION CONTACT:

Charles A. Oravetz, (727) 570-5312, or Barbara A. Schroeder (301) 713-1401. For assistance in modifying TED escape openings to exclude leatherback sea turtles, fishermen may contact gear specialists at the NMFS, Pascagoula, MS, laboratory by phone (228) 762-4591 or by fax (228) 769-8699.

SUPPLEMENTARY INFORMATION: The taking of sea turtles is governed by regulations implementing the Endangered Species Act (ESA) at 50 CFR parts 222 and 223 (see 64 FR 14051, March 23, 1999, final rule consolidating and reorganizing ESA regulations). Generally, the taking of sea turtles is prohibited. However, the incidental take of turtles during shrimp fishing in the Atlantic Ocean off the coast of the southeastern United States and in the Gulf of Mexico is excepted from the taking prohibition pursuant to sea turtle conservation regulations at 50 CFR 223.206, which include a requirement that shrimp trawlers have a NMFS-approved TED installed in each net rigged for fishing. The use of TEDs significantly reduces mortality of loggerhead, green, Kemp's ridley, and hawksbill sea turtles. Because leatherback turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs is not an effective means of protecting leatherback turtles.

Through a final rule (60 FR 47713, September 14, 1995), NMFS established regulations to protect leatherback turtles when they occur in locally high densities during their annual, spring northward migration along the Atlantic seaboard. Within the leatherback conservation zone, NMFS is required to close an area for 2 weeks when leatherback sightings exceed 10 animals per 50 nm (92.6 km) during repeated aerial surveys pursuant to 50 CFR 223.206(d)(2)(iv)(A) through (C).

NMFS announced a 2-week closure on May 7, 1999 (64 FR 25460, May 12, 1999), affecting the portion of the leatherback conservation zone between 32° N. lat. and 33° N. lat. The boundaries of the closure correspond to those of shrimp fishery statistical zone

32. The closure was based on high concentrations of leatherbacks off the South Carolina coast, observed during aerial surveys conducted on April 27 and May 3. During those surveys, the highest concentrations were noted in waters off the southern half of the state between Hilton Head Island, SC, and at Kiawah Island, SC. After a May 11 aerial survey reconfirmed the continued high abundance of leatherback turtles in that closed zone, NMFS extended the closure for an additional week, through May 28, 1999 (64 FR 27206, May 19, 1999). That survey also showed that the leatherbacks were continuing to move slowly northward, as expected. Concentrations of leatherbacks were noted between Murrels Inlet and Myrtle Beach.

An aerial survey conducted on May 14, 1999, along a portion of the South Carolina coast sighted 10 leatherback turtles over an approximately 15 nm (28 km) trackline, beginning at approximately 33°23' N. lat., 079°07' W. long. (offshore Pawleys Island, SC) and ending at approximately 33°35' N. lat., 078°57' W. long. (offshore Surfside Beach, SC). A repeated survey along the same trackline documented 12 leatherbacks on May 18, 1999. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), is closing, for 2 weeks, all inshore waters and offshore waters within 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded by 32° N. lat. and 33° N. lat., within the leatherback conservation zone, to fishing by shrimp trawlers required to have a TED installed in each net that is rigged for fishing, unless the TED installed has an NMFS' approved escape opening large enough to exclude leatherbacks, as set forth at 50 CFR 223.207(a)(7)(ii)(B) or 223.207(c)(1)(iv)(B). These regulations specify modifications that can be made to either single-grid hard TEDs or Parker soft TEDs to allow leatherbacks to escape. The boundaries of the closed zone correspond to those of shrimp fishery statistical zone 33.

This action does not affect the current closure in zone 32. The May 18 aerial survey sighted 19 leatherbacks along

two tracklines greater than 50 nm (92.6 km) parallel to the South Carolina coast, south of 33° N. lat. NMFS is therefore taking no action at this time to extend the current closure beyond May 28, 1999, nor to re-open the area closure.

NMFS will continue to monitor the the Georgia and South Carolina coasts for the presence of leatherback sea turtles through weekly aerial surveys. Continued high abundance of leatherbacks greater than 10 turtles per 50 nm (92.6 km) of trackline will require further closure action, as per 50 CFR 223.206(d)(2)(iv)(B). If leatherback sightings fall to 5 or fewer turtles per 50 nm (92.6 km) of trackline in repeated surveys, then the AA may modify the closure or re-open the area, as per 50 CFR 223.206(d)(4)(ii). NMFS will consult with the appropriate state natural resource officials in the closed area in making a determination to modify this closure or re-open the area, as per 50 CFR 223.206(d)(4)(iv). Fishermen should monitor NOAA weather radio for announcements.

The regulations at 50 CFR 223.206(d)(2)(iv) state that fishermen operating in the closed area with TEDs modified to exclude leatherback turtles must notify the NMFS Southeast Regional Administrator of their intentions to fish in the closed area. This aspect of the regulations does not have a current Office of Management and Budget control number, issued pursuant to the Paperwork Reduction Act. Consequently, fishermen are not required to notify the Regional Administrator prior to fishing in the closed area, but they must still meet the gear requirements.

This closure has been announced on the NOAA weather channel, in newspapers, and other media. Shrimp trawlers may also call Charles Oravetz (see **FURTHER INFORMATION CONTACT**) for updated area closure information.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The AA is taking this action in accordance with the requirements of 50

CFR 223.206(d)(2)(iv) to provide emergency protection for endangered leatherback sea turtles from incidental capture and from drowning in shrimp trawls. Leatherback sea turtles are occurring in high concentrations in coastal waters in shrimp fishery statistical zone 32. This action allows shrimp fishing to continue in the affected area and informs fishermen of the gear changes that they can make to protect leatherback sea turtles.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be contrary to the public interest to be provided with prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback. Furthermore, notice and opportunity to comment on this action were provided through the proposed rule establishing these actions (60 FR 25663, May 12, 1995). For these reasons, good cause exists under 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. As stated above, the additional closure has been announced on the NOAA weather radio, in newspapers, and other media, allowing time for the shrimp fishery to comply with this rule.

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.* are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule requiring TED use in shrimp trawls and the regulatory framework for the Leatherback Conservation Zone (60 FR 47713, September 14, 1995). Copies of the EA are available (see **ADDRESSES**).

Dated: May 21, 1999.

Penelope D. Dalton,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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